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on February 24, 2005

Rod D. Baker 2-24-05

Rod D. Baker, Reg. No. 35,434

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MAR 03 2005

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.: 09/910,415
Filed: 07/20/2001
Applicant: MEYERS, J.
Title: MASK FOR USE WITH EYEGLASSES

**Declaration of ROD D. BAKER, under 37 CFR 1.68,
in Support of Petition to Revive Unintentionally Abandoned Patent Application**

1. I, Rod D. Baker, am a partner at the law firm of Peacock, Myers & Adams., P.C., in Albuquerque, New Mexico. I am a registered patent attorney, Registration No. 35,434. I am licensed to practice law in Colorado and New Mexico, and have been practicing law full-time since 1988. I have never been disciplined by any bar or court organization. I have personal knowledge of the following facts, except those which I state upon belief, which I believe to be true based upon all the information presently available to me.

General Factual Background

2. In early September, 2004, our law firm was approached by the firm of Lewis & Meyers, LLC, in Denver, Colorado, with a request for assistance. We were advised that Lewis & Meyers recently had discharged its only registered patent attorney, Glenn Webb. The partners at Lewis & Meyers (Kurt Lewis and Liza Meyers), asked if we could assist their firm in serving its



existing clients having patent matters and patent applications pending before the U.S. Patent and Trademark Office. On about September 3, 2004, we agreed to provide such assistance.

3. I was the attorney from my firm primarily assigned to assist the Lewis & Meyers law firm. My task was and is to provide the service of a qualified and registered patent attorney to meet the needs of clients of Lewis & Meyers having patent matters requiring attention. I was notified by Liza Meyers that Mr. Webb, who evidently had suffered some sort of severe mental breakdown, had neglected and compromised Lewis & Meyers' patent practice, and then had abandoned some of the firm's patent files and matters. As a result, it became evident that Lewis & Meyers was in need of patent attorney help in addressing the negative consequences of Mr. Webb's improper conduct.

4. Upon my information and belief, the attorneys and staff of Lewis & Meyers, during late August, 2004, had begun the enormous task of determining the scope of Mr. Webb's evident misconduct, and to identify matters and clients potentially affected thereby.

5. On or about September 10, 2004, I flew from Albuquerque to Denver to meet with the attorneys of Lewis & Myers at their offices, and to assist in the process of identifying the firm's patent clients and meeting their needs. A significant reason for my meeting in Denver was to meet personally with Mr. John Lechman, President of Nova Solutions, Inc., one of Lewis & Meyers' major patent clients. Nova Solutions, Inc., has a substantial patent portfolio, including numerous issued patents and patent applications pending (both foreign and domestic), the care of which previously had been entrusted mainly to Mr. Webb.

6. Subsequent to my office visit of September 10, 2004, upon information and belief the staff at Lewis & Meyers, including Mr. Kurt Lewis, Ms. Liza Meyers, and Mr. Ian Wadsworth, as well as others, further increased their efforts to organize the matters abandoned by Mr. Webb. Upon information and belief, the efforts involved searches and evaluation of countless "hard copy" documents, as well as a review of the contents of hard drives on Mr. Webb's computer.

7. During September and October, 2004, the patent matters previously in Mr. Webb's care were identified and evaluated by me and by staff at both law firms, and a number of matters neglected by Mr. Webb came to light. In cooperation with attorneys and staff at Lewis & Meyers, I attempted to prioritize matters, as they were identified, demanding attention as a result of Mr. Webb's conduct. I assigned a priority to "saving" those inventions, applications, and patents that had not yet been forfeited, lapsed or abandoned as a result of Mr. Webb's conduct. The attorneys and staff at Lewis & Meyers identified a number of patent matters requiring immediate or very prompt attention to avoid the loss of patent rights. Additionally, our firm identified or confirmed urgent deadlines for the payment of various maintenance fees and annuities on patents and foreign patent applications for which Mr. Webb had made no provision for payment.

8. While the survey of Mr. Webb's actions (inactions) was and is ongoing, during October, November, and December 2004, our firm and/or persons at Lewis & Meyers identified and acted on many separate urgent matters pertaining to patent matters abandoned by Mr. Webb. This included the identification of the need to respond to at least five Notices of Missing Parts and filing responses thereto (with petitions and surcharges for extensions of time), the preparation and timely filing of two Information Disclosure Statements, the preparation and filing of two significant provisional patent applications on inventions in jeopardy of bar date deadlines, and the preparation and filing of one continuation-in-part application also subject to an urgent external deadline. Again, all these matters had been those previously under the charge of Mr. Webb, and it was necessary in several cases first to expose the need to take action before actually acting.

9. In addition, during October, November, and December 2004, staff at our firm and/or the Lewis & Meyers firm identified the need to advise a client of at least five separate United States Patent Office maintenance fees, and at least 10 separate foreign patent annuities, due in that time period. This required consultation with the client regarding the merit of paying such fees. The logistics of timely paying the foreign annuities was addressed and resolved —

despite some incomplete foreign files, and in certain instances difficulties demonstrating to foreign agents the existence of proper authority to instruct on behalf of the client. Due to our diligence, several foreign annuities were timely paid, and at least two United States maintenance fees also were timely paid.

10. As a result of our prompt attention, the patentability of no less than three inventions of three different clients was preserved, and the abandonment or lapsing of at least half a dozen separate patents or patent applications, both foreign and domestic, was averted.

11. All the foregoing was undertaken simultaneously with the ongoing practice of law (with the deadlines typical thereof) by me and my firm, on behalf of pre-existing clients and matters unrelated to our assistance to the Lewis & Meyers firm.

12. A substantial and yet ongoing concern, demanding significant time and attention from mid-September to the present, is the matter of the patent portfolio of Nova Solutions, Inc., which portfolio had been the responsibility of Mr. Webb. During October, 2004, a review of the patent files of this client by me and staff of our firm revealed the possibility that Mr. Webb had not accorded them necessary attention, and suspicions immediately arose, some later confirmed, that patent deadlines had passed and important ones loomed without any evident attention by Mr. Webb. While the attorneys and staff at Lewis & Meyers had compiled a list of the Nova Solutions patents and applications by title, serial number, and other basic indicia, the files forwarded to Lewis & Meyers by the previous attorneys were in some instances incomplete, causing it to be difficult for us to determine the status of any given patent or application, particularly foreign patents and applications.

13. Proper evaluation of the Nova Solutions portfolio required that all the files pertaining to that client be assembled and shipped from Denver to Albuquerque, for review by me and my staff. The Nova Solutions files, totaling eleven "bankers" boxes, were received by my firm in late September 2004.

14. The organization, review and evaluation of the Nova Solutions portfolio occupied substantial amounts of my and my staff's time during October and November 2004. Such evaluation in fact is currently incomplete and ongoing, especially with respect to foreign patent matters in which we are still endeavoring to identify foreign associates and determine application status (e.g., pending, abandoned, annuities coming due).

15. The challenge of evaluating and managing the Nova Solutions portfolio was and continues to be compounded by the fact that in some instances formal powers of attorney apparently had never been granted to Mr. Webb, thus grossly complicating efforts to obtain confidential information otherwise available from foreign patent practitioners, annuity payment service, and the U.S. Patent and Trademark Office "private" Patent Application Information Retrieval (PAIR).

16. I and my colleagues continue efforts to obtain proper revocations of previous powers of attorney, and new powers of attorney, for filing in the appropriate patent cases among the many previously handled by Mr. Webb – both foreign and domestic.

17. I and my colleagues at Lewis & Meyers anticipate the need to file an as yet unknown number of other petitions to revive (besides the present) in an effort to undo, to the extent possible, the damage resulting from Mr. Webb's apparent mental breakdown.

Facts Specific to the Present Petition

18. Upon information and belief, the present application, Serial No. 09/910,415 to J. Meyers, was filed on July 20, 2001.

19. Upon information and belief, a non-final office action was mailed by the examiner on June 13, 2003. It is unknown when Mr. Webb received the Office action, which was sent to Mr. Webb's home office in Conifer, Colorado.

20. In August 2004, Mr. Webb re-assured the attorneys at Lewis & Meyers that a continuation application from the Meyers '415 application was pending, and that he expected that the application was close to issuance. (See declaration of Liza Meyers)

21. By November 1, 2004, Liza Meyers of the Lewis & Meyers law firm advised me of the pendency of the Meyers '415 application previously being prosecuted by Glenn Webb. Ms. Meyers further advised me that Mr. Webb in the previous months had indicated that while the original Meyers '415 application had been abandoned, he had filed a continuation application and had responded to an office action on the continuing application, and that the continuing application not require immediate attention.

22. During November and December 2004, Mr. Kurt Lewis of Lewis & Meyers endeavored to obtain telephonically information from Mr. Webb regarding the status of many matters previously handled by Mr. Webb, including the Meyers '415 application (or its continuing application). Mr. Lewis advised me on January 24, 2005, that Mr. Webb had continuously refused to provide substantive information about the application.

23. During late 2004, Mr. Ian Walsworth, a clerk at Lewis & Meyers, attempted to reliably determine the status of the Meyers '415 application from the disorganized papers and computer files that had been abandoned by Mr. Webb. While we were able in that time to reconstruct much of the file from documents recovered from Mr. Webb's computer, we were unable to determine whether Mr. Webb had in fact filed a continuing application, or otherwise attempted to maintain the pendency of the Meyers '415 application.

24. Also during late 2004, I was occupied in addressing many other (potentially graver) consequences of Mr. Webb's conduct, as recited herein above, as well as attending to the ongoing practice matters of my own firm unrelated to the Glenn Webb fiasco. Among other things, during late October and November my staff, and staff at Lewis & Myers, inventoried the need to obtain signed revocations of powers of attorney, and new powers of attorney, from the

various clients whose matters were affected by Mr. Webb's actions, and solicited such signed powers from a number of those clients.

25. The applicant, Ms. Judith Meyers, is an elderly woman; consequently, all attempts to contact Mr. Webb on her behalf were made by her daughter, Liza Meyers or Liza Meyers' partner, Kurt Lewis, of the Meyers & Lewis law firm.

26. As a result of Mr. Webb's refusal to provide any information regarding the Meyers '415 application, I and the attorneys at Lewis & Meyers were unable to determine certainly whether Mr. Webb indeed had filed a continuing application, and if so, the filing date and serial number of the application. The sole power of attorney filed with the Office for the matter was to Mr. Webb, and the complete lack of information about the purported continuing application prevented us from making any intelligent inquiries with the Office regarding any such application.

27. The uncertainty of the status of the application was heightened by the fact that a portion of an apparent draft response to the 06/13/03 office action on the Meyers '415 application was recovered from Mr. Webb's computer, upon information and belief sometime in October, 2004, but without any sure indication whether it had been finalized and filed with the U.S. Patent and Trademark Office.

28. Consequently, only suspecting that it would become necessary, I began in late December 2004 to prepare the present petition.

29. Still, I deemed it proper to determine certainly whether a continuing application was pending before filing a petition to revive the abandoned Meyers '415 application; obviously, if a continuing application was pending, a petition to revive the Meyers '415 application – the present petition – would be unnecessary. Rather, my efforts could be directed to obtaining control of the continuing application by filing the Applicant's revocation and new power of attorney. However, even filing such a revocation seemed to require some cooperation from

Mr. Webb, since the serial number of any continuing application was unknown to anyone but Mr. Webb.

30. In a final, desperate effort to obtain information regarding the supposed continuing application, Ms. Liza Meyers on January 31, 2005, sent an e-mail to Mr. Webb specifically on the subject of the Meyers '415 application. As of February 8, 2005, Mr. Webb had refused to respond to Liza Meyers' e-mail. A true and correct of Ms. Meyers e-mail to Mr. Webb, and her e-mail report to me of February 8, 2004, are attached hereto as Exhibit A.

31. Consequently, as of February 8, 2005, to the best of my information and belief, neither I nor anyone at the Lewis & Meyers law firm had any certain knowledge regarding whether Mr. Webb had filed a continuing application, and if so, the particulars and status of it.

32. On February 8, 2005 I contacted Mr. Webb myself, via e-mail, to inquire about the Meyers '415 application, or any continuing application. A true and correct copy of my inquiry is attached hereto as Exhibit B.

33. On February 11, 2005, Mr. Webb replied, via e-mail, to my inquiry. His reply was largely non-responsive, refused to answer my simple inquiry, and consisted primarily of evasive blaming. A true and correct copy of his reply is attached hereto as Exhibit C.

34. Thus, on February 12, 2005, after failed efforts to establish with information obtained from Mr. Webb and/or gleaned from Mr. Webb's files during late 2004 whether a continuing application had been filed or not, I concluded that Mr. Webb must have been lying in all previous representations that he had filed a continuing application to preserve the pendency of the Meyers '415 application. I then ascertained that a petition to revive the application was necessary.

35. The next day, February 13, 2005, I resumed in earnest the preparation of declarations in support of the present petition. Except as interrupted by other pressing matters, I

have been actively engaged in the preparation of this petition since that time, including the need to prepare revised declarations for review, revision, re-review and signature by persons at Lewis & Meyers. Concurrently, I have been attempting to prepare a reasonably cogent response to the 06/13/043 Office action, despite not having reference to the patent application drawings in the matter.

36. I am contemplating lodging complaints or requests for disciplinary action with the appropriate organizations, including the U.S. Patent Office's Office of Enrollment and Discipline, regarding Mr. Webb's conduct. I have not yet done so, until after I have investigated whether Mr. Webb's conduct was the result of a treatable mental illness or substance abuse, and if so, whether he has obtained such treatment.

37. I believe, given the totality of the circumstances recited above and in the concurrent declarations of Liza Meyers, and Diane Weber, and due to the broad scope of Mr. Webb's misconduct, affecting as it has countless different individual patent clients and the voluminous patent portfolio of a major corporate client of the Lewis & Meyers law firm, that I and others in concert with me have acted as expeditiously as possible in this matter. The entire delay in filing the required reply from the due date of the reply (December 13, 2003) until the filing of this grantable petition was, I genuinely believe, unavoidable due to the deliberate evasiveness and outright misrepresentations of Mr. Webb.

38. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that further these statements were made with the knowledge that willful false statements and the like so

made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United states Code, and that such willful false statements may jeopardize the validity of the above referenced application or any patent issuing thereon.

Date: 2-24-05

A handwritten signature in black ink, appearing to read "Rod D. Baker", written over a horizontal line.

Rod D. Baker

G:\RDB\Client\Stevinson-declaration-revive-RDB.wpd

Rod Baker

From: Liza Meyers [liza@lewismeyers.com]
Sent: Tuesday, February 08, 2005 8:58 AM
To: Rod Baker
Cc: 'Kurt Lewis'
Subject: FW: On the Fold - patent application

Rod,

Glenn never responded to my email below. Perhaps you should take a shot? What do you think?

Liza

Liza Meyers
Lewis Meyers & Scheid LLC
River Point Building
2300 Fifteenth Street, Suite 320
Denver, Colorado 80202
303.534.5040, Ext. 204 (Phone)
720.352.1967 (Cell)
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-----Original Message-----

From: Liza Meyers [mailto:liza@lewismeyers.com]
Sent: Monday, January 31, 2005 4:27 PM
To: 'glenn@webbpatlaw.com'
Subject: On the Fold - patent application

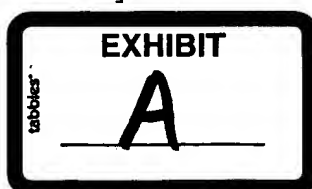
Hi Glenn,

Would you please let me know the status of my Mother's patent application? Your last email indicated you would check, but that it should be close to issuance. We have not received any further correspondence from the Patent Office.

Thanks,
Liza

-----Original Message-----

From: Glenn L. Webb [mailto:glenn@webbpatlaw.com]
Sent: Wednesday, August 25, 2004 9:40 AM
To: liza@webblewis.com



2/22/2005

Subject: *Spam?* patent application

Liza,

Ian and I prepared a response last spring for your mom's application. We had missed the first deadline to file it, but paid the extension fee. I will check in with the Patent Office and see what the status is. It should be close to issuance hopefully. If you want to switch it over to someone else, I can assist, or if you want me to see it through to issuance I will be glad to do that at no charge.

Regards,

Glenn L. Webb
The Law Offices of Glenn L. Webb
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2/22/2005

From: Rod Baker [mailto:rbaker@peacocklaw.com]
Sent: Tuesday, February 08, 2005 12:39 PM
To: glenn@webbpatlaw.com
Subject: PatentMatter
Importance: High

Dear Mr. Webb:

Our law firm has been retained by the law firm of Lewis, Meyers & Scheid to assist them in handling patent matters remaining in their charge after your resignation from that firm. Our paramount goal is to protect the interests of clients -- including clients for whom you previously did work.

One of those clients is Judith Meyers, for whom you filed an application for a party mask invention attachable to the user's eyeglasses. We are unable to determine whether there is a patent application presently pending on the Judith Meyers invention. We earnestly solicit your cooperation in dealing with this matter, by answering the following question "YES" or "NO": Did you file a continuation application on Ms. Myers behalf? And, if the answer is "YES," kindly provide me the filing date (likely sometime late in 2003) and serial number of the continuing application.

Your urgent reply is requested, so that we can advise Ms. Meyers and take the steps necessary to protect/revive her patent rights. You may call me or e-mail with any questions concerning Ms. Judith Meyers' patent matter.

Respond by e-mail or telephone, but please respond to me right away. Phone (505) 998-1504.

Sincerely,

Rod D. Baker

Rod D. Baker
Peacock, Myers & Adams. P.C.
Post Office Box 26927
Albuquerque, New Mexico 87125
(505) 998-1500
rbaker@peacocklaw.com



2/22/2005

Rod Baker

From: Glenn L. Webb [glenn@webbpatlaw.com]
Sent: Friday, February 11, 2005 3:30 PM
To: Rod Baker
Subject: RE: PatentMatter

Mr. Baker:

All files relating to Judith Meyers were retained by Kurt Lewis & Liza Meyers as of August 18th, 2004. I retained no copies of those files, electronic or hard copy. At the time of my departure on August 18, 2004, I took no files with me. I received selected portions of hard files some weeks later only after Lewis & Meyers received client instruction or upon the discretion of Kurt Lewis. All electronic copies were maintained on the firm server, and I was not allowed copies of those electronic files. Further, Kurt Lewis and Liza Meyers refused my request to inspect the files to ensure that all matters were in order. They took that responsibility upon themselves. To this day they have yet to inform me of the status of the files.

All responsibility for those files belong to Kurt Lewis & Liza Meyers, so you will need to get any information from them. Please note however that Liza Meyers and Kurt Lewis were notified the status of the J. Meyers application on September 29, 2004 by email (attached). A response had been drafted by myself and Ian Walsworth in March 2004. Ian who is still in the employ of that firm can verify that. That response apparently fell into the black hole of the filing and docketing system of the firm at that time along with other matters that have only recently become evident. Please note that the filing system under the responsibility of Diane Weber for patent files from 2002 - 2004 consisted of piling documents in her office with the promise that she would get to it later. As of August 18, 2004, that pile was approximately 3 - 4 feet high and consisted of all correspondence from and to the Patent Office between 2002 and 2004 in no particular order. The docketing system was similarly maintained. Please note that Ms. Weber had been reprimanded on several occasions during that time period by Liza Meyers and myself for failing to properly file, docket and transmit matters.

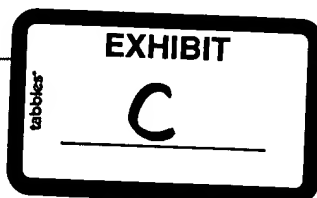
I regret that I have no additional information that could be of benefit to Judith Meyers.

Regards,

Glenn L. Webb
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2/22/2005